THE CORPORATION JOURNAL

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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

Attention is directed to a recent decision by the Supreme Court of Utah, reported on page 43, in which the Court holds that all contracts of an unqualified foreign corporation "doing business" in the state are wholly void.

Also see California case reported on page 30, in which the Supreme Court of California holds that the distribution by a corporation—of some portion of its capital assets, after a lawful reduction of its stock capitalization does not of itself constitute a violation of the State Constitution.

Kenneth Kingsbury

President

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

Talks on Agreements for Corporate Financing

2. Anticipation of Bankers' and Brokers' Requirements in Contents of Certificate of Incorporation and Description of Securities.

As pointed out in our brief talk in the October number of "The Corporation Journal," difficulty will be obviated by anticipating as far as possible what bankers or brokers will require in the corporate structure. Corporations must first be organized and usually operated for some time before an underwriting of their securities can be obtained from those able to furnish the corporation with additional capital. When the time comes for the corporation to secure such assistance its securities must be in a form and issued under conditions under which the necessary commissions and bonuses can be paid. If such bonuses are to be paid in common stock any preferred stock authorized or issued by the corporation should be upon terms with respect to accumulations and compulsory redemption as will not so far reduce the value of the common stock as to make it unattractive. Those forming a corporation should keep this in mind and not let their zeal for making the preferred stock attractive get them into the difficulty of preventing future financing because the value of the common stock has become so far reduced as to be unsaleable or unacceptable as a bonus

Care must also be taken at the time of incorporation that the securities be properly described. Counsel for bankers and brokers will be unable to approve an underwriting where the securities to be offered are not what their names represent them to be. This has particular reference to bond issues and the use of such terms as "first mortgages" and "prior liens." Care must also be taken in using an accurate description or title for preferred stock. It will not do merely to err on the conservative side by too modest a description of the securities to be offered, because this will interfere with their distribution. The principal point we wish to make here, is that at the time of incorporation all of the possible requirements as to the contents of the certificate of incorporation and of the description and contents of the securities which will come up at the time agreements are attempted to be entered into for corporate financing, should be weighed and considered. To subsequently change the corporate structure after securities have been issued to those starting an enterprise will be found to be difficult, costly in delays, and sometimes impossible to effectuate.

Domestic Corporations

California.

Constitution does not prohibit distribution to stockholders of surplus created by lawful reduction of par value of shares. This action involves an original application for mandamus by the Dominguez Land Corporation, to compel the commissioner of corporations to file and assume jurisdiction over the corporation's application to distribute a certain sum out of its surplus money and property on hand, among its stockholders, which surplus had been created by the corporation in reducing the par value of its shares from $100 to $50, in accordance with the provisions of the statute and after compliance with the provisions of the law therein stated. The refusal is based on Article X, section 11 of the Constitution, the commissioner claiming that it is the meaning of that section that when interests or shares are created by a corporation and value received by the corporation therefor, that or equivalent value is always to remain with the corporation while those interests or shares are outstanding. The corporation could not make the distribution involved without the consent of the commissioner in view of section 309 of the Civil Code as amended by the laws of 1917, providing that dividends may not be made except from surplus profits arising from the business unless first permitted or authorized so to do by the commissioner. The Supreme Court of California in allowing the writ says that the transaction which the corporation, with the permission of the commissioner, proposed to consummate was one which upon the face of its said application and upon the showing made therein did not come with the inhibitions of the Constitution upon which the commissioner relies, and that it was therefor his duty under the provisions of the statutes to entertain, file, consider and determine the corporation's application. The court further says that the proposition of a capital stock corporation to distribute some portion of its capital assets among its stockholders after a reduction of its stock capitalization has been regularly and lawfully accomplished does not necessarily and of itself constitute a violation of the section of the Constitution under review. Dominguez Land Corporation v. Daugherty, State Commissioner of Corporations, 238 Pac. 697. James S. Bennett, of Los Angeles, for petitioner. U. S. Webb, Atty. Gen., and Robert W. Harrison, Chief Deputy Atty. Gen., for respondent.

Canada.

Blue sky law. In an action involving the removal of a subscriber's name from the list of contributories of a dominion company it was shown that at the time he was solicited to take shares, the company had not complied with the Sale of Shares Act. The lower court allowed the removal. However, the Alberta Supreme Court (Appellate Division) in restoring the subscriber's name to the list says that a subscription taken before the company obtained the certificate under the Act is voidable and not void and if the allotment of the shares did not take place until after the certificate was obtained, the subscriber acting

as a shareholder and not repudiating until after the company went into liquidation, his name will not be removed from the list. Re Great North Ins. Co. Painter's Case. 2 D. L. R. 778. G. H. Ross, K. C., of Calgary, for appellant. P. R. Bryenton, of Calgary, for respondent.

Delaware.

Merger de facto. This action involves a bequest to a charitable institution under a will. It appears that the corporation to which the bequest was made had attempted to merge with another corporation, it being claimed that because of the merger the latter corporation is entitled to receive the bequest. It was shown that all that was done toward the so called merger was for the directors of the two corporations to meet together and resolve upon a merger, and thereafter the one sold its real estate and moved its physical personalty and its inmates to the other. It then ceased to function and its charter expired by limitation soon thereafter. It was conceded that the steps required by the general corporation law with reference to merger were never taken, however it was contended that a merger de facto had been accomplished. The Court of Chancery of Delaware in passing on this point says that assuming there may be a merger de facto of two corporations, yet the rule as to colorable compliance which is applicable to the existence of a corporation de facto ought likewise to prevail as to mergers de facto. Therefore as there was no colorable compliance with the statutory provisions when the so-called attempt was made, no merger de facto had been accomplished. It was shown that a lawful merger had been accomplished at a later date, allowing the merging corporation to receive the bequest left to the merged company. Blackstone v. Chandler et al., 130 Atl. 34. Julian C. Walker and George C. Hering, Jr., both of Wilmington, for complainant. Leonard E. Wales, of Wilmington, for defendants.

Recognized abbreviations properly used in certificate for revival of corporation. The charter of McMahon Brothers, Incorporated, a Delaware corporation, was repealed for non-payment of taxes in January, 1915. In December, 1917, the last acting president and secretary of the company filed in the office of the secretary of state a certificate for the renewal and revival of the company, designating the company in the certificate as "McMahon Bros. Inc." and not as "McMahon Brothers, Incorporated." The contention in the instant case is that the name "McMahon Bros. Inc." used in the revival proceedings is not the same name as "McMahon Brothers, Incorporated," and is in law a different corporation. The Supreme Court of Delaware in holding the names to be the same, says: "Where the only difference between the original name and the revival name consists in well recognized abbreviations, and the discrepancy or difference in the words is not at all likely to cause any one to believe that a new corporation, or one different from the original is intended, the corporation named in the revival proceedings is the same as the one named in the original certificate. In other words, if, notwithstanding the difference in the words,

a reasonable person would think the corporation named in the original certificate and the one named in the revival certificate was one and the same, there would be a compliance with the requirement of the statute in that behalf." Pippen v. McMahon Bros., Inc., 130 Atl. 37. Reuben Satterthwaite, Jr., of Wilmington, for plaintiff. Clarence A. Southerland, of Wilmington, for defendant.

Suit by stockholders on behalf of corporation. The Court of Chancery of Delaware makes the following statement regarding the right of stockholders to maintain an action on behalf of a corporation: "It is a clearly established general rule that a cause of action belonging to a corporation must be asserted by the corporation itself. This rule is inflexible at law. But it has its exceptions in equity. A stockholder may under certain circumstances sue in equity in right of the corporation. Where he does so, however, he asserts the right of the corporation. This he is not permitted to do, unless the circumstances be such that the corporation will not sue. Its unwillingness to act must be evidenced by a refusal after proper demand, or by facts which show that by reason of hostile interest or guilty participation in the wrongs complained of, the responsible managers of the corporation cannot be expected to sue, or would be improper persons to conduct the litigation. In the latter case, a demand upon them and a refusal are for obvious reasons not required as a condition precedent to the stockholder's right to proceed." Baker v. Bankers' Mortgage Co. et al., 129 Atl. 775. Caleb S. Layton (of Marvel, Marvel, Layton & Hughes), and James R. Morford, all of Wilmington, for complainant. Charles F. Curley (of Saulsbury, Curley & Davis), of Wilmington, for defendants Sohland.

Indiana.

Powers of president. The United States Circuit Court of Appeals (Seventh Circuit) in passing on a point regarding the powers of presidents of corporations relies upon the case of Wainwright v. Roots Co., 176 Ind. 682, decided by the Supreme Court of Indiana holding that the office of president of a private corporation of itself confers no power on the incumbent to bind the corporation or control its property. His powers as agent must come by delegation from the corporation through the board of directors, formally and directly granted, or implied from its habit or custom of doing business. In re Paoli Lithia Springs Hotel Co. Jeffery v. Ratts, 5 F. (2d) 902. Harry N. Weinberg and Theodore E. Rein, both of Chicago, Ill., for appellant. James A. Ross, of Indianapolis, for appellee.

Kentucky.

Duty of corporation in issuing stock certificates. The whole duty does not rest upon a corporation to see to it that subscribers for stock receive their certificates, since it is not required to issue them except upon demand by the subscriber. In the instant case the Court of Appeals of Kentucky found that there was no demand by the stockholders bringing the action until after the corporation had voted to

abandon the business. Boyd County Fair Ass'n. et al. v. Eastham et al., 270 S. W. 12. R. D. Davis and S. S. Willis, both of Ashland, for appellants. Martin & Smith, of Catlettsburg, for appellees.

Maryland.

Corporation cannot restrain use of descriptive words in absence of secondary meaning. This action was brought by the Drive It Yourself Company, a Maryland corporation, seeking to enjoin certain persons operating a business known as the Saunders Drive It Yourself System from using the phrase "drive it yourself." The Court of Appeals of Maryland in denying the injunction holds that the words are merely descriptive of the business and the use thereof could not be enjoined unless the phrase had acquired a secondary meaning. The court in holding that no secondary meaning had been acquired, in view of the fact that the corporation had only started its business in Maryland eighteen months before the Saunders System, says: "Every form of business must have a beginning and it would be dangerous to hold that the mere fact that a person started a business in a particular locality, and conducted it successfully for a brief period of time, was sufficient to give such person the exclusive right, in that locality, to use the descriptive name by which the business was generally known elsewhere throughout the country." The court further says that the following taken from the case of Rumford Chemical Works v. Muth, 35 Fed. 524, is the best statement of any general rule by which it can be determined whether or not a particular phrase or name is descriptive: "The true test, it appears to me, must be, not whether the words are exhaustively descriptive of the article designated, but whether in themselves, and, as they are commonly used by those who understand their meaning, they are reasonably indicative and descriptive of the thing intended." Drive It Yourself Co. v. North et al., 130 Atl. 57. Ogle Marbury and Harry O. Levin, both of Baltimore, for appellant. George W. Lindsay, of Baltimore, and Everett C. Wilson, of Kansas City, Mo. (Sauerwein, Lindsay & Donoho, of Baltimore, on the brief), for appellees.

Minnesota.

Constitutional liability of stockholders. This is an action by the receiver of the Minnesota Implement Company, a domestic corporation, to enforce the constitutional liability of the stockholders for its corporate debts. The question presented involves a construction of the articles of incorporation, in view of the following provisions of the State Constitution: "Each stockholder in any corporation except those organized for the purpose of carrying on any kind of manufacturing or mechanical business, shall be liable to the amount of stock held or owned by him." (Art. X, Sec. 3.) The Supreme Court of Minnesota in holding the stockholders liable and that the corporation was not engaged exclusively in manufacturing says that an examination makes it clear that not only manufacturing is provided for in the articles, but the right to acquire patents, patent agreements, and to sell and dispose of the same, to enter into and to carry out contracts of every kind, to acquire, hold, and mortgage real and personal property in every part of the

world, and in general, to carry on such obligations and to do all such things in connection therewith as may be permitted by the laws of Minnesota, necessary or convenient in the conduct of its business. It is manifest that under its articles the company was not confined to manufacturing, but might enter into various kinds of business to an unlimited extent. Sletten et al. v. Fink, 203 N. W. 429. Davis & Michel and M. J. McCabe, all of Minneapolis, for appellants. Frank Tolman, of Paynesville, and Allen & Fletcher, of Minneapolis, for respondent.

Stockholders entitled to notice of unusual business to be transacted at annual meeting. Cannot sell business and assets of solvent corporation against dissent of single stockholder. The United States District Court of Minnesota (Third Division) says that it is not usually necessary to give notice of the business to be transacted at a regular annual meeting of the stockholders of a corporation, but it seems to be the better rule, where some unusual business is to be transacted, such as selling all the corporate property, that notice should be given. In passing on a question regarding the right to sell or transfer the entire business and assets of a solvent corporation the court says that the rule is, that neither the directors nor a majority of the stockholders have the power to sell all the corporate property as against the dissent of a single stockholder, unless the corporation is in a failing condition. This rule is based on the theory that each stockholder has a right to insist that the corporation shall fulfill the purpose for which it was organized, unless its condition cannot properly permit that to be done. Des Moines Life & Annuity Co. v. Midland Ins. Co. et al., 6 F. (2d) 228. George A. & O. H. MacKenzie, both of Gaylord, for plaintiff. Christofferson, Walsh, Christofferson & Jackson, of St. Paul, and Karl H. Covell, of Minneapolis, for defendants.

Blue sky law. In an action against a stockholder of the Northern Minnesota Land & Cattle Company on his constitutional liability, it was contended that no liability existed, inasmuch as the stock was sold in violation of the blue sky law and that the contract being void he never became a stockholder of the company. The Supreme Court of Minnesota in holding the stockholder liable, says: "But is too late now having affirmed his purchase of the stock and confirmed his position as a stockholder by accepting and retaining his certificate and later his dividends, for the defendant to reverse his position and deny his membership in the corporation by reference to the illegality of the sale of its stock to him." Parket v. Merritt et al., 204 N. W. 941. H. H. Phelps, of Duluth, for appellant. Courtney & Courtney, of Duluth, for respondent.

New York.

Installment subscription contract. When subscriber becomes shareholder personally liable to creditor. The present case involves the construction of an installment subscription contract providing that the subscriber should take a certain number of shares of stock in the

company, paying so much down and the balance in weekly payments, and the liability of the signers of such a contract to creditors of the corporation. It was contended that the subscribers upon the execution of the contract and the payment of ten per cent. of the value of the stock became "holders of stock" in the corporation. The New York Supreme Court (Steuben County) in deciding this question says that whether the subscribers were "holders of shares" within the meaning of the statute depends upon the intention of the parties making the contract; that the contract provides that the certificate shall be dated and delivered when full payment is made; it never was made and the subscribers did not under and by permission of the contract become shareholders. In speaking of the contract the court says: "A stock subscription contract, the leading cases hold, is to be tested and construed by the same rules as any common-law contract, except the required statutory payment of 10 per cent. of the par or agreed value of stock subscribed. There must be competent parties, a lawful subject, a consideration, and the payment of 10 per cent. purchase price. All these elements are conceded to be in this case present. We have then on the face an apparent valid executory contract for the purchase of stock. The parties all concede that the contracts in question are valid. Their rights and liabilities, therefore, are to be fixed and ascertained by the intention of the parties." Granger & Co. et al. v. Allen et al., 209 N. Y. Supp. 518. John Griffen, of Hornell, for plaintiffs. James O. Sebring, of Corning, for defendants.

North Carolina.

Under statute corporation remains in existence for three years after dissolution. Suit by stockholders individually. This action is brought by stockholders of a dissolved corporation, individually, to recover on certain freight claims, standing in the name of the corporation. Nothing was shown to indicate that the corporation ever transferred the claims to the stockholders. It was shown that the proceedings to dissolve the corporation were had on or about September 20, 1920 and that the present action was instituted June 21, 1923. The Supreme Court of North Carolina in holding that the stockholders could not maintain the action in their individual capacity, says, that under the provisions of section 1193, C. S., the corporation remained in existence three years, after the dissolution proceedings, and therefore the action for the claims should have been brought by the corporation or the receiver. Worthington et al. v. Gilmers, Inc., 129 S. E. 153. S. G. Mewborn, of Wilson, for appellants. Woodard & Rand, and Connor & Hill, both of Wilson, for appellee.

North Dakota.

Ultra vires. A stranger may not attack collaterally a transaction with a corporation on the ground that it is ultra vires; such attack can be made only by the sovereign authority in a direct proceeding. In the instant case it was contended that a national bank became an assignee and trustee of property, mortgaged and conveyed for the benefit of creditors other than the bank, although expressly pro-

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Not long ago wealthy interests desired to acquire ownership of a small Southern corporation. The majority stockholders were eager to sell on the extremely favorable terms offered. The transaction fell through at the last moment, however, simply because an audit of the stock records disclosed loopholes for future trouble over stock ownership which the prospective buyers did not care to risk.

The company had been formed by men well acquainted with each other and the officers in charge of the stock books—good business men, but unfamiliar with the special precautions required in the keeping of stock records and little expecting a turn of affairs that would make the condition of those records so vital—had thought that formalities in the issue and transfer of shares could safely be dispensed with in a company of that size.

The unexpected happened, however, and that informality in the keeping of the stock records caused the loss to all the stockholders of a rare opportunity.

In another case the officers of an industrial corporation had started out bravely enough to keep the stock records carefully and in due order, but the business was disappointing, no profits were earned, the stock dropped in value, and was traded for almost anything offered.

This depressing condition began
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Many other instances of this ki
could be cited. At the time
incorporation, or during the ea
years thereafter, the possibility
the company's fortunes depend

Stock Records Audited

...ome day upon the condition of its ...tock books is difficult for the ...officers to realize. Remote, too, at ...those times, seems the possibility ...of the development of an unfriendly ...stock interest, or litigation over ...stock ownership, or other circum...tances that may bring the stock ...ecords under searching examination ...with an eye single to finding some ...point of attack against the manage...ment.

Counsel for newly organized cor...porations, observing from exper...ience the importance of being con...stantly prepared for all such situa...tions, no matter how seemingly ...improbable, are more and more ...recommending to their clients the ...appointment of a responsible Trans...fer Agent immediately upon incor...poration.

The Corporation Trust Company is peculiarly fitted to serve business corporations in this capacity—especially those for whom it acts as the statutory agent in the state of incorporation. To all the usual qualifications of a trust company, with a trust company's responsibility, it adds the special knowledge it has gained from its many years of experience with the corporate affairs, and as the corporate agent, of thousands of business corporations, large and small, under all conditions. Intimately acquainted, through this practical experience, with all the situations that arise in the careers of business corporations, either through successes or adversities, The Corporation Trust Company keeps the stock records of those companies for which it acts as Transfer Agent in condition to meet the needs of such situations instantly.

To appoint this company as Transfer Agent immediately upon incorporation means provision for a clean record of stock ownership from the very beginning of corporate existence. For companies already organized and transferring their own stock, the appointment of this company as Transfer Agent now will prove a wise precautionary measure.

Details of our service will be furnished gladly at any office of the company.

hibited from acting in that capacity by a Federal statute, and further, that the bank was not authorized to act in a fiduciary capacity under the laws of the State of North Dakota. The Supreme Court of North Dakota says it is to be noted, however, that no complaint is made by any of the parties to the transaction and that the present attack is a collateral attack. It is plain that the plaintiff in the instant case is not in a position to complain, although it is conceded that, in assuming to act as trustee for certain creditors, the corporation is acting without and beyond its corporate powers, and doing that which it is unauthorized to do. Such action on its part may be attacked only in a direct proceeding by the sovereign authority. It cannot be attacked by a stranger to the transaction in a collateral proceeding. Phillips v. Phillips et al., 204 N. W. 985. Hoopes & Lanier, of Carrington, for appellant. John O. Hanchett, of Valley City, for respondent.

Oregon.

Organizer cannot challenge proper organization of corporation. In an action by the Thompson Optical Institute against one Thompson to restrain him from violating the terms of a contract whereby he agreed to refrain from engaging in the manufacture and sale of optical goods, it was contended as a defense that the contract was not legal and that the corporation was not properly organized. The Supreme Court of Oregon in allowing the decree found that Thompson was the guiding hand and chief organizer of the corporation. He gave it his name. He subscribed for all but three shares of its capital stock. He presided at a meeting of the stockholders and directors of the company when a resolution to purchase his optical business was adopted. He made a contract of sale and sold and delivered that business to the corporation for the consideration of 197 shares of the capital stock thereof. He then sold and transferred his stock to the president and manager of the corporation, and the company has carried on its business under the terms of the contract for a period of more than five years. In view of these facts he cannot be heard to challenge the validity of the contract or the proper organization of the corporation. Thompson Optical Institute v. Thompson, 237 Pac. 965. Wilber Henderson, of Portland (John P. Hannon, of Portland, on the brief), for appellant. W. P. La Roche and J. B. Ofner, both of Portland, for respondent.

Pennsylvania.

Oral agreement to sell shares to corporation not sufficient to justify officers in refusing to transfer stock on books. A stockholder of R. W. Evans & Company, a Delaware corporation, having its principal office in Pittsburgh, being about to remove from the state transferred his shares to another. Upon his return to the state the shares were duly endorsed and re-transferred to him, the present action involving a writ of mandamus to compel the corporation to effect the transfer on the books of the company. The refusal to transfer the stock was based on a oral agreement whereby it was claimed the stockholder sold the stock to the corporation. The corporation claimed that in accordance

with this agreement an obligation owing by the stockholder to the company was cancelled and various other sums paid him, and that in view of this oral agreement the corporation is the lawful owner of the shares and the present holder is therefore, not entitled to have the stock transferred to him. The Common Pleas Court, Allegheny County, in denying the claim of the corporation and allowing the writ says that a mere agreement to transfer shares of stock to a corporation will not give rise to such a lien as will justify the officers of the company in refusing to transfer the stock on the corporate books to the shareholder. Evans v. Evans & Co. et al., Vol. 73, No. 36 Pittsburgh Legal Journal 646. Moorhead & Knox, of Pittsburgh, for plaintiff. John B. Nicklas, Jr., of Pittsburgh, for defendants.

Charter of first class refused to manufacturers' association. This is an application for a charter as a corporation of the first class to be styled "Ready-to-Wear Manufacturers' Association of Philadelphia." It appears that the applicants were all doing business either as manufacturers or dealers in ready-to-wear garments and that the membership was to be confined to corporations, firms and persons engaged in the same general trade. It was further shown that the principal purposes of the corporation were to be: First: The maintenance of a central showroom of merchandise manufactured or offered for sale by the members of the proposed corporation. Second: The engaging in co-operative buying for the members of the corporation. Third: Maintenance of a joint credit bureau. The Court of Common Pleas Philadelphia County (No. 2), in refusing the application says: "The general scheme contenplated is the erection, as a corporation of the first class, of an agency to act for the member corporations, firms and individuals in performing certain of the functions of the respective businesses conducted by the members, and to, through this agency, accomplish a partial merger of the business of the members. The act authorizes the courts to grant charters as corporations of the first class for the encouragement and protection of trade and commerce, and petitioners do declare their intention to encourage and promote the trade in Philadelphia in ready-to-wear merchandise. The mere averment of this as a purpose does not justify the granting of a charter where other and the chief purposes disclosed are to promote the several businesses of the members and to increase the business profits of these members through the use of a joint agency in making purchases of merchandise, maintaining a joint show and salesroom, conducting a joint credit and collection bureau or department, and pursuing other functions ordinarily exercised by the members in conducting their separate businesses." Ready-to-Wear Manufacturers' Association Charter. 5 D. & C. 713. Harry Shapiro of Philadelphia, for petitioners.

Foreign Corporations

Arizona.

Maintenance of suit does not require qualification. The Supreme Court of Arizona, holds in a recent decision, that a foreign corporation may maintain a suit within the state of Arizona without complying with the provisions of the statute relating to foreign corporations. The court says that to come within the statute a corporation must be engaged in an enterprise of some permanence and durability and must transact within the state some substantial part of its ordinary business and not merely a single act. McKee, State Bank Com'r. v. Stewart Land & Live Stock Co. et al., 238 Pac. 326. Frank H. Hereford, of Tucson, for appellant. Francis M. Hartman, of Tucson, for appellees.

New York.

Jurisdiction of New York court over election of officers of foreign corporation. Proxies offered after close of election but before report of judges should be received and counted. This action involves an application for peremptory mandamus against the judges of election of a stockholders' meeting of the Frontier Mortgage Corporation, a foreign corporation, to compel the judges to receive, tabulate and count certain contested proxies. The proxies were refused by the judges because they were not presented until after the polls had closed and the revenue stamps had not been cancelled. The New York Supreme Court, Appellate Division (Fourth Department) holds that jurisdiction over the controversy was properly taken in view of the fact that the sole assets of the corporation consist of shares of stock in a New York corporation. Ownership of this stock carries with it the right to name a majority of the directors of the New York corporation and to do so is its only business. The company resides in New York and all of its officers and directors save one, and nearly all of its stockholders are residents of New York. The company is also authorized under the laws of Delaware, the state of its creation, to hold all stockholders meetings in New York. Therefore in view of these facts there is absent, neither jurisdiction, nor ability to make a decree effective. As to the contested proxies the court found that while they were not offered until after the polls had closed, the delay was due solely to an oversight as the proxies had been in the meeting in the custody of one of the judges. Although the polls had closed the meeting was still in existence awaiting the report of the judges and the proxies should have been received and counted. The fundamental rule is that all who are entitled to take part shall be treated with fairness and good faith and this rule permits the correction of a mere mistake, when it can be made without prejudice to the rights of others and before the final vote is announced. The fact that the revenue stamps were not cancelled did not invalidate the proxies. Young v. Jebbett et al., 211 N. Y. Supp. 61. Botsford, Mitchell & Albro, of Buffalo (Peter A. Schulz, of Buffalo, of counsel), for appellant Frontier Mortgage Corporation.

Peter A. Schulz, of Buffalo, in pro. per. Fleischmann, Block & Altman, of Buffalo (Simon Fleischmann and James O. Moore, both of Buffalo, of counsel), for respondent.

Single sale does not constitute "doing business." The New York Supreme Court (Oswego County) says that the making of one sale by a foreign corporation does not constitute "doing business" in the state, as the expression "doing business in this state" as used in the statute has been defined as implying corporate continuity of conduct in that respect; such as might be evidenced by the investment of capital, with the maintenance of an office for the transaction of its business, and those incidental circumstances which attest the corporate intent to avail itself of the privilege to carry on a business. The court further says that in order to take advantage of the penalty prescribed by the statute not only must the contract sued upon have been made in the state, but the corporation must be "doing business" in the state. Spiegel, May, Stern Co. v. Mitchell, 125 N. Y. Misc. 604. Thomas L. McKay, of Oswego, for plaintiff. L. W. Baker, of Oswego, for defendant.

Facts determinative of principal place of business of bankrupt foreign corporation. The United States Circuit Court of Appeals (Second Circuit) holds, that under the following facts, a bankrupt foreign corporation's principal place of business was in New York. All the executive and official business of the corporation from its beginning was transacted in New York. Its only asset, a bank account of $95,000, was deposited in a bank in the Southern District of New York. The books of account were constantly kept there, at least during the entire six months preceding the filing of the petition. The litigation and settlement of claims was conducted from New York. Checks and vouchers in payment of moneys were drawn on the bank in New York and signed and countersigned in the state. It had no property or place of business elsewhere except to maintain the statutory office in the state of Maryland, that state having been nominally selected for incorporation because of the adaptability of the laws of the state to some particular purpose of the incorporators. The court further says that the statement in the charter as to the principal office is not conclusive, the question being where in point of fact was the company's principal place of business. In re Lone Star Shipbuilding Cc., 6 F. (2d) 192. Davies, Auerbach & Cornell, of New York City (Charles H. Tuttle and Murray C. Bernays, both of New York City, of counsel), for appellant. Harry G. Liese, of Brooklyn, (Elkin Turk, of New York City, of counsel), for bankrupt.

Ohio.

Service of process on "managing agent." In an action involving service of process upon a foreign corporation, the Superior Court of Cincinnati was called upon to construe a statute providing for service of process upon a "managing agent." The court in holding the service valid says that in the present case the agent was sent into the state by the corporation to test machinery; to look after its proper installation;

to collect money; to make adjustments of disputed accounts; to settle controversies; to make sales and in general to further the business interests of the company. The company was certainly "doing business" in the state. It had no other representative in the state except the agent, and he was clearly the agent of the company and with respect to its business its managing agent within the intent and meaning of the statute. The court further says that the weight of authority is to the effect that the installation of machinery, the settlement and adjustment of disputed claims, and the making of sales constitute "doing business" within the state and the authority granted to the agent to do these things constitutes him a managing agent within the state for the service of process. Israel v. The Champion Shoe Machinery Co., Vol. 25 N. P. R. (N. S.) 507. M. Froome Barbour, of Cincinnati, for plaintiff. Bolsinger & Benham, of Cincinnati, for defendant.

Texas.

Selling bookkeeping system through local agents on orders approved at home office held interstate commerce notwithstanding agreement covering installation. The bookkeeping or accounting system, the subject of contract and basis of controversy in this action consisted of certain articles manufactured by the McCaskey Register Company, an unqualified foreign corporation, and sold in Texas by local agents domiciled in the state on orders approved at the home office in Ohio. At the time of taking each order a cash payment was made to the agent. The Court of Civil Appeals of Texas in reversing the decision of the lower court dismissing the action because of the non-qualification of the corporation, says that it has been held in many cases that transactions similar to the transaction involved in this case, with the exception as to agreements for installation by the seller, constitute interstate commerce, and therefore are not subject to state legislation. The following statement is made regarding the agreement for installation: "It is a matter of common knowledge that many articles are sold under agreement or understanding that the seller will have them installed for the purchaser, when such installation is incidental and involves a small expense as compared to the purchase price of the article; and we are of the opinion that such agreements concerning transactions which otherwise would constitute interstate commerce, do not remove them from that category and render them intrastate commerce." McCaskey Register Co. v. Mann et al., 273 S. W. 1113. J. E. Shropshire, of Brady, for appellant. Newman & McCollum, of Brady, for appellees.

Suit dismissed on failure of foreign corporation to plead and prove right to do business. In a suit by a foreign corporation to recover balance due on a contract for the burning of ballast in the state, the Court of Civil Appeals of Texas dismissed the action finding that all the services contracted to be performed under the several contracts, were by the terms of the contract to be performed and were in fact performed in the state of Texas. The corporation alleged in its petition that it was a private corporation, existing under and by virtue

of the laws of the state of Wisconsin, but it did not allege that there had been issued to it by the secretary of state a permit authorizing it to do business in the state of Texas and as a matter of fact such permit had not been issued to the corporation. The question raised is one of fundamental error. St. Louis S. W. Ry. Co. of Texas v. Davy Burnt Clay Ballast Co., 273 S. W. 630. W. B. Hamilton, J. E. Gilbert and E. B. Perkins, all of Dallas, for appellant. Cox, Fulton & Dickey, of Wichita Falls, for appellee.

Utah.

Note and mortgage executed by unqualified foreign corporation "doing business" in state wholly void. In an action involving several mortgages on property of the Utah Serum Company, it was shown that one of the mortgages was to the Ft. Dodge Serum Company, an unqualified foreign corporation, in the amount of $3,000. It was further shown that on or about the time the negotiations relating to the note and mortgage were entered into, the Ft. Dodge company leased the property of the Utah company, took possession of the premises, made some repairs thereon and commenced to carry on the business of producing serum. All of these happenings took place prior to the qualification of the Ft. Dodge company in Utah. The Supreme Court of Utah, finding that the note and mortgage were entered into in the state at a time when the corporation was "doing business" in the state without having qualified, says: "Where it is made to appear that any foreign corporation, except an insurance corporation, is doing business within this state within the meaning of section 945, without having complied therewith, every contract whatsoever made or entered into by or on behalf of such corporation within this state, or which is to be executed or performed within this state, is wholly void on behalf of such corporation. * * * Neither can this offending corporation prevail on the ground that the act of lending money was not doing business, and hence the contract was not a void transaction; nor upon the ground that the contract by which the money was lent was fully performed before appellant began doing business in this state; nor yet upon any implied contract or equitable ground. The statute strikes down every contract and transaction whatsoever made or had within the state by such corporation. The language of section 947 includes all transactions whatsoever, the first contract as well as the last, implied contracts as well as those which are expressed, and excludes the idea that such a corporation may pick out any particular contract made within the state and claim any rights under or sue upon it." Dunn v. Utah Serum Co. et al., 238 Pac. 245. De Vine, Howell, Stine & Gwilliam and A. W. Agee, all of Ogden, for appellant. A. G. Horn, of Ogden, for respondent.

Taxation

Mississippi.

Statute taxing right to own stock of foreign corporation unconstitutional. The Supreme Court of Mississippi holds that the tax of one-half of one per centum upon the right of residents of Mississippi to own each and every share of the capital stock of nonresident corporations, stock companies, associations or trust estates, organized and conducting business for profit, to be computed upon a basis of the actual market value of the stock at the time it is returned for assessment, and imposed by chapter 129, Laws of 1924, is a property tax and not a privilege tax and violates the provisions of the state Constitution, providing that taxation shall be uniform and equal throughout the state and that property shall be taxed in proportion to its value. The court however says that the statutes requiring the taxpayer to return for taxation the value of all shares of stock of foreign corporations owned by him, clearly imposes a tax on the shares of stock of a foreign corporation owned by residents of Mississippi and the taxation of such shares violates no constitutional provision of Mississippi or of the United States. Barnes, Sheriff v. Jones, 103 So. 773. T. J. Wills, of Hattiesburg, and Floyd & Easterling, of Jackson (Green, Green & Potter, of Jackson, amici curiae), for appellant. C. S. Street, of Laurel (Watkins, Watkins & Eager, of Jackson, amici curiae), for appellee.

Pennsylvania.

Corporation changing shares having par value to shares of no par value without increasing capital not liable for bonus. The Wayne Sewerage Company, having a capitalization of $50,000, consisting of 500 shares of the par value of $100 each, filed in the office of the secretary of the Commonwealth, an election return authorizing the conversion of the 500 shares into 2,000 shares without nominal or par value. Later the Auditor General settled an account against the company, the account appearing to be for bonus on capital stock. The bonus was laid at the rate of one-third of one per cent upon $150,000, this amount being arrived at by valuing the 2,000 shares of no par value at $100 per share, less $50,000, the previous capitalization upon which a bonus had been paid. The Common Pleas Court of Dauphin County in disallowing the claim for bonus holds that the legislature did not intend to impose a bonus for the right of converting par value shares into shares without par value and, therefore the settlement of bonus, at the valuation of $100 per share, on all of the no par value shares of the company, in excess of the number of shares having par value, is without authority at law. Commonwealth of Pennsylvania v. Wayne Sewerage Co., 14 P. C. R. 16. George W. Woodruff, Attorney General, for the Commonwealth. Snyder, Miller & Hull, of Harrisburg, for defendant.

Notes

One of the most important incorporations of recent months was completed with the organization during October of the General Baking Corporation. This company, it is announced, will immediately acquire a controlling interest in the General Baking Company, and it is indicated by the press that the Ward Baking Corporation, the Continental Baking Corporation, and Southern Baking Corporation will be merged into the new organization, in which event the company will be the largest baking institution in the world.

The Corporation Trust Company was chosen by counsel to assist in incorporation of the company and has also been appointed transfer agent for the new corporation's stock, which consists of 5,000,000 shares of Class A without par value, and 5,000,000 shares of Class B without par value.

The Corporation Trust Company during October completed for counsel of J. I. Case Plow Works, Inc., the qualification of that company as a foreign corporation in twenty states.

The United States Supreme Court has denied the Federal Trade Commission's petition for a writ of certiorari in the Commission's case against Chicago Portrait Company and also in the case against John C. Winston Company. In both cases the Commission's orders had been vacated by a United States Circuit Court of Appeals. The cases are covered in The Corporation Trust Company's Federal Trade Commission Service, Docket Pages 293 and 381 respectively.

The Corporation Trust Company has been appointed Registrar of the stock of Thompson and Company, and Transfer Agent of the stock of Midwest Brotherhood of Locomotive Engineers Securities Corporation, of Worth, Inc., and of American Peat Moss Corporation. It has also been appointed Depositary and Transfer Agent of Voting Trust Certificates of McLaren Consolidated Cone Corporation.

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374 corporations were organized under the laws of Delaware from September 20 to October 20, as against 377 reported in last month's Journal for the preceding 30-day period.

Some Important Matters for November and December

This calendar does not purport to cover general taxes or reports to other than state officials, nor those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

ALABAMA—Annual Fee for Permit to do Business, due January 1.—Foreign Corporations.

CALIFORNIA—Annual License Tax due between January 1 and first Monday of February.—Domestic and Foreign Corporations.

Capital Stock Affidavit due between January 1 and first Monday of February.—Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

INDIANA—Annual Report due during January. Foreign Corporations.

NEW MEXICO—Annual Franchise Tax due on or before November 30.—Domestic and Foreign Corporations.

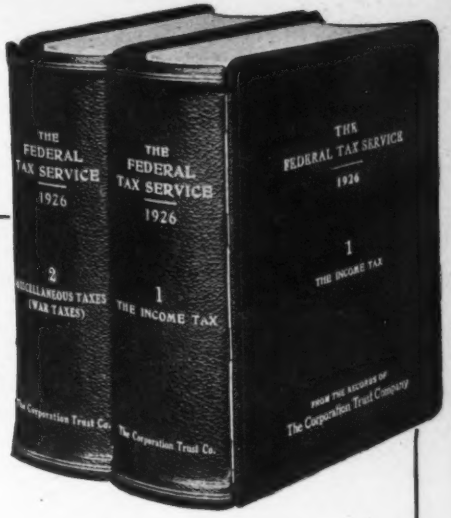
NEW YORK—Annual Franchise Tax on Business Corporations due on or before January 1.—Domestic and Foreign Business Corporations other than realty and holding companies.

NORTH CAROLINA—Annual Franchise Fee due on or before first day of December.—Foreign and Domestic Corporations.

OHIO—Annual Franchise Tax due on or before December 1.—Domestic and Foreign Corporations.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1924 due on or before December 15.

UTAH—Corporation License Tax due between November 15 and December 15.—Domestic and Foreign Corporations.



Board of Tax Appeals Decisions

In determining the course to be followed in any Federal Income Tax matter it is wise to give careful consideration to any decisions of the Board of Tax Appeals in cases involving the same or similar conditions or circumstances.

The Federal Tax Service of The Corporation Trust Company not only reports all the decisions of the Board as issued, but in it each decision is linked, by means of the Cumulative Index (kept constantly up to date) with all other matters in the Service bearing on the question decided. When investigating any tax matter through this Service you are therefore enabled to know at once if there have been any decisions by the Board of Tax Appeals of interest in your case, and if so to see quickly, from the brief digest of each decision given in the Cumulative Index, the degree of each one's importance to you. From the digest you are referred directly to that page of the Service on which that particular decision is reported.

In addition to this efficient system of connecting references between each Board of Tax Appeals decision and all related matters in the Service, The Federal Tax Service enables you to find any particular decision by its Docket Number, or by its Decision Number, or by Appellant's Name, whichever is known to you or is most convenient.

There is no other source of information in which access to the Board of Tax Appeals decisions is made so convenient.